ARE THE ISRAELI SETTLEMENTS IN THE WEST BANK ILLEGAL UNDER INTERNATIONAL LAW?

Position Paper

thinc.

THE HAGUE INITIATIVE
for INTERNATIONAL CO-OPERATION

An initiative to study the relationship between Israel and the nations, in order to promote international peace and security, friendly relations amongst nations, and peaceful resolution of disputes based on the principles of justice and international law.

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Executive Summary

This Position Paper is intended to assist in the analysis of the international legal aspects of what are often referred to as "settlements" in the "Occupied Palestinian Territories."[1]

The "West Bank" and East Jerusalem is an area of approximately 6000 km² north/west, east and south/west of Jerusalem. It encompasses most of the mountainous territory of what for centuries after 70AD was known as "Palestine."

For 2000 years the territory covering what is now current Israel and the West Bank was part of larger empires. In 1922, the international community agreed that a Jewish national home should be established in the area then known as Palestine—including all of Jerusalem and the area now known as the "West Bank". This was part of the desire to achieve an equitable determination of the territories of the Ottoman Turkish Empire after WWI in order to give the peoples of the Middle East self-determination. For millennia, the Jewish people had been one of the most important peoples of the Middle East. In the Mandate for Palestine, the international community recognized the unique connection of the Jewish people with all of Palestine—including Jerusalem and Judea and Samaria (which only became known as the "West Bank" after 1950).

In the Six-Day War in June 1967, the Israeli army unexpectantly gained control over a large area of land that was prior to 1948 part of the Mandate for Palestine, but since the conclusion of hostilities in 1949 had been controlled by Syria (Golan Heights), Egypt (Gaza Strip and Sinai) and Jordan (the "West Bank"). Since June 1967, with the exception of "East Jerusalem," Israel has not annexed these territories, but has instead voluntarily submitted to the application of the law of "belligerent occupation." As a result, these territories are now almost universally referred to as "the occupied Palestinian territories."

Israel is heavily criticized for its military administration and for Israeli civilian "settlements" in these territories. These territories are referred to in UN resolutions, by international organizations and agencies, in the media and even by the International Court of Justice as the "Occupied Palestinian Territories" ("OPT"). It is often stated that "Israel is illegally occupying" these territories, and that "the settlements" are "illegal" and an "obstacle to peace." UN Security Council resolution 465 (1980), for example, calls on Israel to "dismantle the existing settlements." The International Court of Justice stated generically in the *Wall Advisory Opinion* that "the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law."[2]

1 Parts of this Paper draw heavily on earlier studies on related topics, including in particular Gauthier, J. *Sovereignty Over the Old City of Jerusalem: A Study of the Historical, Religious, Political and Legal Aspects of the Question of the Old City*, Thesis No. 725, University of Geneva, 2007, Grief, H. *The Legal Foundation and Borders of Israel under International Law*, Mazo Publishers, Jerusalem, 2008, and Wallace, C. *Foundations of the International Legal Rights of the Jewish People and the State of Israel and Implications for the Proposed New Palestinian State*, European Coalition for Israel, 2012.

2 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory—Advisory Opinion, ICJ Reports 2004, p. 183 (para 120).

On December 23, 2016, the UN Security Council adopted Resolution 2334, in which it stated that the establishment by Israel of "settlements" in the "Palestinian territory occupied since 1967" "has no legal validity and constitutes a flagrant violation of international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace." In referring to "Palestinian territory occupied since 1967," the Security Council is referring to the Gaza Strip, the Sinai, the Golan Heights and the "West Bank" and "East Jerusalem." This paper focusses on the status of East Jerusalem and the West Bank. We argue that the statements by the Security Council that the establishment by Israel of "settlements" in these territories are illegal is both incorrect and misleading.

The term "Occupied Palestinian Territories" is often used to make the suggestion that:

a. the 1949 Armistice Lines constitute legally binding "borders";
b. these territories "belong" to the "Palestinians";
c. Israel's "occupation" of these territories is illegitimate.

This paper sets out the main legal issues involved in characterizing these territories.

The main conclusions of this analysis are:

1. International law applicable to the West Bank is extremely complex and controversial. International law does not provide "cut-and-dried" solutions to the conflict between Israel and its neighbors in relation to these territories. Care should be taken to avoid generalizations. When referring to international law, it is essential to specify precisely which actions by the State of Israel are considered to be in breach of international law. For the reasons set out below, blanket statements that "the settlements are illegal" completely fail to take account of these complexities.
2. Israel has potentially legitimate claims to territorial sovereignty (title) with respect to all of the territory included in the former Mandate for Palestine. This covers all of the West Bank (including East Jerusalem).
3. In light of these (potential) claims, and Israel's rights to "territorial integrity", neither the United Nations, the EU nor any other party or organization has the jurisdiction to impose any legally-binding "solution" with respect to these territories without Israel's consent.
4. The International Court of Justice (ICJ) also does not have jurisdiction to make legally-binding determinations concerning these territories without Israel's consent.
5. Given Israel's potentially legitimate sovereign territorial claims with respect to all or part of these territories, it is inaccurate and misleading to refer to them as "Palestinian" in so far as this is intended to imply that these territories are part of the sovereign territory of another people or State.
6. Although the West Bank is (almost) universally referred to as "occupied" (including by Israel itself—at least for the territories outside Jerusalem), the international law of belligerent occupation arguably does not apply to the West Bank.

7. But even if the West Bank does constitute "occupied" territory within the meaning of the law of occupation, that law does not prohibit occupation as such. It does not require Israel to "withdraw" its military personnel or its citizens from the West Bank pending the finalization of a negotiated peace treaty.
8. The international law of belligerent occupation only prohibits specific kinds of conduct by occupying States. At best, it could be argued that article 49(6) of the Fourth Geneva Convention prohibits the State of Israel from taking measures to transfer (or encourage the transfer of) Israeli citizens from Israel to the West Bank.
9. But even on this reading, international law only applies to the activities of the State of Israel. It does not prohibit or restrict the right of Israeli citizens to settle voluntarily in the West Bank, or to move in and out of, or to conduct activities or build houses or other infrastructure in, the West Bank.
10. While the "Palestinians" arguably have a right to self-determination, international law does not mandate the establishment of a "Palestinian" state next to Israel. The "two-state" solution is a political goal, not a legal requirement. It is therefore invalid to claim that settlements are "illegal" because they somehow frustrate the establishment of a Palestinian state.
11. It is also incorrect to state or imply that "Palestine" is already a state.
12. Additional considerations are raised by the unique status of Jerusalem. The fact that "East Jerusalem" contains sites regarded as holy by Jews, Christians and Moslems raises additional issues of concern. In particular, no steps should be taken that would limit the freedom of members of any of these religions to access their holy places. Allowing East Jerusalem to come under the exclusive control of an Islamic regime would by definition arguably result in the illegitimate restriction of the rights of Christians and Jews to access these holy sites.
13. Israel and the PLO remain bound by the terms of the Oslo Accords. Until such time as these binding agreements are revoked, they provide the legal framework for the settlement of disputes between Israel and the PLO. Under the Oslo Accords, Israel and the PLO are both entitled and obliged to negotiate directly with each other concerning all "final status" issues, including Jerusalem, borders and settlements. Under Article XXXI of the Interim Agreement, neither party is entitled to take unilateral action that will "change the status" of the West Bank pending the outcome of permanent status negotiations.
14. The UN Security Council and General Assembly, the EU and individual member states have no authority to limit the rights of Israel and its citizens with respect to the West Bank, including "East Jerusalem." In fact, measures by the EU or United Nations organs to comply with PLO requests to change the status of the West Bank unilaterally, or to impose limitations on the rights of Israel to negotiate as set out above, could arguably themselves constitute infringements of international law.

1. Historical Background

For over 3000 years, the Jewish people have been one of the most significant people groups in the Middle East. The nation of Israel, with Jerusalem as its capital and the Temple as the center of its national life, existed as an independent sovereign nation for centuries in what has now become known as the "West Bank" but to the Jews is known as Judea and Samaria. Jewish communities were flourishing in Samaria, Hebron, Damascus, Alexandria, Baghdad, the Arabian Peninsula, and throughout the Middle East long before Christians or Muslims entered the scene. Following the destruction of the Second Temple and eviction of the Jews in the first and second centuries AD, the Jewish people continued to live in Judea and Samaria alongside other peoples and under various external powers.

In 1922, following the defeat of the Turkish Ottoman Empire and its allies by the Allied Powers in WWI, the international community (convening in the League of Nations) recognized the rights of all the peoples of the Middle East—Jews and non-Jews—to self-determination.[3] In addition to establishing Mandates for Syria/Lebanon and Mesopotamia (Iraq), they implemented the decision of the Principal Allied Powers in San Remo in 1920 to create a Mandate for Palestine, based on the recognition of "the historical connection of the Jewish people with Palestine and the grounds for reconstituting their national home in that country."[4]

Recognizing the right of the Jewish people to self-determination, and their historical connection with the land of "Palestine," the core purpose of the Mandate for Palestine was to enable the Jewish people to re-establish a national home in Palestine—which included land both west and east of the Jordan River. The area of Palestine east of the Jordan, known as Transjordan, was specifically reserved in 1922 for the creation of a Palestinian Arab state, which later became the Hashemite Kingdom of Jordan. The area west of the Jordan remained under the Mandate for Palestine, whose core aim remained the re-establishment of a Jewish national home.

Significant sections of the local Arab population opposed the creation of a Jewish homeland. Responding to this opposition, and the imminent withdrawal of Great Britain as Mandatory power, in November 1947, the UN General Assembly proposed to "internationalize" Jerusalem and partition "western" Palestine into separate "Jewish" and "Arab" states.[5] This "Partition Plan" was (reluctantly) accepted by the Jewish people, but was rejected by the Arabs and never came into effect.

3 Article 22 of the Covenant of the League of Nations. See: League of Nations, The Mandates System, Series of League of Nations Publications VI.A.MANDATES 1945. VI.A.1, Geneva 1945, LoN/1945.VI.A.1. Article 22 of the Covenant speaks of the application of "the principle of well-being and development to these peoples."

4 San Remo, April 25, 1920.

5 UN General Assembly Resolution 181(II) of November 29, 1947.

On May 14, 1948, as the Mandate for Palestine came to an end, the Jewish people proclaimed the Jewish State of Israel, in fulfillment of their historical and legal rights to the Land as recognized in the Mandate for Palestine and the exercise of their internationally-recognized right to self-determination.

Independence War of 1948

Israel was immediately invaded on May 15, 1948, by five Arab states (Egypt, Syria, Jordan, Iraq, and Lebanon), in support of the local Palestinian Arab forces led by Haj Amin al Husseini, the grand Mufti of Jerusalem. Their declared common intent was to wipe out the new Jewish State. Israel survived. In 1949, armistice (cease-fire) agreements were entered into between Israel and the five Arab states. Those agreements did not affect the status of the borders of the Jewish state. From mid-1949 to June 1967, Egypt occupied Gaza, Jordan occupied (and later illegally annexed) the "West Bank," and Syria occupied part of the Golan Heights.

Six-Day War of 1967

In June 1967, Israel fought a defensive war against its neighbors, who continued to reject its right to exist and threatened to attack. Israel unexpectedly gained control over those parts of western Mandate of Palestine, which had been occupied since 1949 by Egypt, Jordan, and Syria, as well as the Sinai. In September 1967, the Arab League adopted "main principles by which the Arab States abide, namely, no peace with Israel, no recognition of Israel, no negotiations with it, and insistence on the rights of the Palestinian people in their own country."[6] The UN Security Council responded in November 1967 by issuing Resolution 242, setting out parameters for a negotiated peace. Resolution 242 has since been accepted as the basis for negotiations between Israel and the PLO.

With the exception of Jerusalem (which Israel has declared to be the capital of the State of Israel), Israel did not annex these newly gained territories but voluntarily elected to comply with the international humanitarian law applicable to belligerently occupied territories. Israel has consistently denied that it is legally (*de jure*) required to do so. It has subsequently withdrawn from large parts of the territories occupied in 1967 (Sinai in 1979 and Gaza in 2005). In October 1973, a number of Arab nations attacked Israel once again, this time on Yom Kippur, the holiest day of the Jewish year. In the early 1970s, some Arab nations entered into other measures directed against the Jewish State of Israel, including: supporting global Palestinian terrorism and the Arab oil boycott of European countries supporting Israel.

On November 6, 1973, the nine countries of the EEC met in Brussels to formulate a new European common policy that was designed to bring an end to the oil boycott and Pales-

6 These are the famous "Three No's" of the "Khartoum Resolution" issued by the Arab League Summit on 1 September 1967. In this resolution, the Arab Heads of State agreed, amongst other things, "to unite their political efforts at the international and diplomatic level to eliminate the effects of the aggression and to ensure the withdrawal of the aggressive Israeli forces from the Arab lands which have been occupied since the aggression of June 5."

tinian terrorism on European soil. A number of points were introduced resulting in a new European, pro-Arab Middle East policy. One of these was that Europe would support the creation of a viable Arab Palestinian state covering all of the territories over which Israel gained control in the 1967 Six-Day War (the so-called Occupied Palestinian territories). This new EU policy has effectively recognized the "pre-1967 lines" (i.e. the 1949 Armistice Lines) as the border between Israel and the proposed new Arab Palestinian state, and declared all Jewish settlements established in these areas since June 1967 "illegal."[7]

Jewish and Arab Refugees

Somewhere between 450,000 and 750,000 Arabs fled western Palestine during the 1947-9 conflict. But it must be seen in the context of events in the region, including the forced exodus of Jewish refugees from East Jerusalem, the West Bank and from Arab countries. The "Palestinian refugee problem," together with the "Jewish refugees" who fled many countries of the Middle East in the same period, is one of the greatest travesties of justice of the 20th century, and cries out for resolution. In the subsequent decades, approximately 850,000 Jews fled from the countries of Northern Africa and the Middle East as a result of increasing anti-Semitism and persecution.

There is much controversy about the extent to which Arabs were forced to leave their land. No doubt mistakes were made on both sides. But one thing is certain—the conflict that resulted in their flight was created by Arab rejection of Jewish nationhood in general, and of the Partition Plan in particular. In contrast to the Jewish refugees (who have been absorbed in Israel), since 1949, the "Palestinian refugees" and their descendants have been denied the possibility of being absorbed into their host states (which is the normal case for refugees) and been forced to live in sub-standard conditions in UNRWA refugee camps with the hope of being able to "return" to the towns and cities from which their forebears fled.

Israel has developed since 1948 into an open, pluralistic democracy. It is far from perfect, and there are many obstacles to be overcome. But, Israel has demonstrated that it is committed to democratic principles and capable of protecting the rights of its minorities. Non-Jews have in principle equal civil, political, and religious rights. Over 20 percent of Israeli citizens, several Knesset members, and one Supreme Court judge are Arabs.

Israel has proven that it is willing to enter into peace treaties with its neighbors: Israel has entered into peace treaties with Egypt (1979) and Jordan (1994). In 1993, the Israeli government demonstrated in the Oslo Accords its commitment to assist the Arab Palestinian people to achieve independence. In 2000 and 2008, Israel offered to cede almost all of the West Bank to be part of a Palestinian state. The PLO rejected both offers.

Since the Oslo Accords, the Arab Palestinians have developed significant independence in terms of economic development and institutional governance. However, there is still a high degree of institutional instability and evidence of significant breaches of human rights

7 On July 31, 1974, agreement was reached between the EEC and the Arab League in Paris further specifying EEC/Arab cooperation and the creation of the Euro-Arab dialogue. See further Ye'or, Bat *Eurabia: the Euro-Arab Axis* (Fairleigh Dickinson University Press 2005).

by the PLO and Palestinian Authority in the "Palestinian" territories. Today, the Middle East is in a state of chaos. The rise of ISIS, the Muslim Brotherhood, and other extremist Islamic groups in Egypt, Syria, Iraq, Libya, and other countries has introduced an unprecedented level of instability in the region. Minority groups (especially Christians) are being persecuted and murdered.

2. Legal Issues

Many States, multilateral institutions and the International Court of Justice suggest that "Israeli settlements" in the territories outside the 1949 Armistice Lines ("East Jerusalem" and the West Bank) are illegal.

According to the International Court of Justice in its 2004 Advisory Opinion on the "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", article 49(6) of the Fourth Geneva Convention prohibits "any measures taken by an occupying Power in order to organize or encourage transfers of parts of its own population into the occupied territory." The Court concludes that "the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law"—suggesting that all Israeli settlements have been established illegally (apparently overlooking the fact that not all Israelis who live in the West Bank do so as a result of Israeli government policy or measures).

In Resolution 2334 of December 2016, the UN Security Council referred to the ICJ's Opinion as authority for its statement that Israel's establishment of settlements "has no legal validity and constitutes a flagrant violation of international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace."

The EU seems to go even further, considering Israeli settlements to be illegal, not only because they infringe article 49(6) of the Fourth Geneva Convention, but also because what it refers to as Israel's policy of "creeping annexation" presents an obstacle to the achievement of Palestinian statehood. The EU states that its policy concerning Israeli settlements is justified by international law:

- International humanitarian law—including the Fourth Geneva Convention[8]—applies in the "Occupied Palestinian Territory" (OPT);
- The OPT comprises "all territories occupied by Israel since 1967";
- All Israeli settlements in these territories are "illegal, irrespective of recent decisions by the government of Israel";
- All of the OPT "belongs" in principle to the future Palestinian state—including Area C (currently under Israeli control), which is "its main land reserve";
- All states, including Israel and the EU and its member states, are under a legal obligation to ensure the viability of the two-state solution. International law prohibits Israel from taking any steps which "may prejudice the creation of a viable Palestinian state" or which threaten to make a two-state solution impossible;
- The Palestinian state must—under international law—be based on the pre-1967 bor-

8 The Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949).

ders. "The EU reiterates that it will not recognize any changes to the pre-1967 borders including with regard to Jerusalem, other than those agreed by the parties"; and

- Israel's annexation of Jerusalem is regarded as illegal, and Jerusalem must be divided in accordance with the "pre-1967 borders" and become the capital of both Israel and the new Palestinian state.[9]

2.1 Pre-Existing Territorial Rights of Israel and the Jewish People with Respect to Jerusalem and the "West Bank"

Any internationally-sponsored solution to the rights of the Arab Palestinians must respect the pre-existing legal, historical, cultural, and religious connection, which the Jewish people have with Jerusalem and the "West Bank," as reflected in the San Remo Resolution (1920), the Mandate for Palestine (1922), and the Covenant of the League of Nations (1922).[10] Through these instruments, the Jewish people have obtained legal rights and interests protected under international law with respect to the territory of Palestine—including Jerusalem and the "West Bank" (Judea and Samaria).

The Mandate for Palestine refers to the Balfour Declaration and states that "recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country." These instruments give international legal recognition both to the close relationship which the Jewish people had with the land from Biblical times, as well as to the urgency for granting them a national home arising from the centuries of persecution in the Diaspora.

The rights and interests recognized and/or granted under these instruments have never been waived or abrogated. Specifically, Article 80 of the UN Charter ensured that the rights granted under the Mandate for Palestine continued, notwithstanding the termination of the Mandate itself and the replacement of the League of Nations by the United Nations.[11]

On the basis of Israel's legitimate claims under international law to sovereignty with respect to Palestine beyond the "Green Line," Israel, as a sovereign state, is entitled to negotiate the transfer or cession of territorial sovereignty to another entity. This means that a solution cannot be "imposed" without Israel's consent. On the contrary, any multilateral or unilateral decision by other states that directly or indirectly infringes these rights is a violation of international law.

9 See the conclusions of the EU 3166th Foreign Affairs Council on the Middle East Process, Brussels, May 14, 2012.
10 See Appendix.
11 See Appendix.

2.2 Borders of the State of Israel in 1948

It is strongly arguable that the borders of the State of Israel upon its establishment in May 1948 were determined by the international legal principle known as 'uti possidetis juris'.[12] *Uti possidetis juris* is one of the main principles of customary international law intended to ensure stability, certainty and continuity in the demarcation of boundaries. It 'clarifies and determines the territorial boundaries of newly emerging states by providing that states emerging from decolonization shall presumptively inherit the colonial administrative borders that they held at the time of independence.'[13] In effect, the principle of *uti possidetis juris* transforms these colonial and administrative lines that exist at the moment of the birth of the new State into international boundaries.

Several leading international law scholars support the view that this doctrine is decisive to the determination of the borders of the State of Israel; both upon its establishment in 1948 and today.[14] Surprisingly, however, little attention has been given to this doctrine in the debates about the Israel/Palestine conflict and the territorial scope of the State of Israel. Yet, 'Israel's independence would appear to fall squarely within the bounds of circumstances that trigger the principle of *uti possidetis juris*. Applying the rule would then appear to dictate that Israel's borders are those of the Mandate for Palestine.'[15]

The administrative boundaries of the Mandate territory of Palestine came forth out of legal agreements that were concluded by the British Mandatory (in relation with others) in 1922 and 1923.[16] Through these agreements, the Principal Allied Powers fixed the northern boundary[17] and the eastern boundary of the Mandate territory.[18]

2.3 The 1949 Armistice Lines

Israel signed Armistice Agreements in early/mid 1949 with Egypt, Lebanon, Jordan, and Syria.[19] The boundaries described in the Armistice Agreements—often referred to as the "Green Line"—were cease-fire lines only.[20] They were not intended to (and did not) affect the under-

12 This principle has been applied to determine the borders and thus also the scope of territorial sovereignty of almost all new States that have emerged in the last century. Uti possidetis juris has determined the borders of states emerging from the decolonization process in Latin America (eg. El Salvador, Honduras, Nicaragua, Argentina, Chile and Brazil), Africa (e.g. Benin, Nigeria, Mali, Burkina Faso, Togo, Ghana, Cameroon, Namibia, Uganda, Rwanda, Burundi, Eritrea, Ethiopia, Tunisia and Libya), Asia (e.g. Cambodia/Thailand,) and the Pacific region (e.g. New Guinea, Samoa, Nauru and East Timor). More recently, it has also been used to determine the borders of the states emerging from the dissolution of the Soviet Union (e.g. Russia/Ukraine), Czechoslovakia (Czech and Slovak Republics), and former Yugoslavia (e.g. Serbia, Croatia).

13 Steven S. Ratner, "Drawing a bettter line: *Uti Possedetis* and New States" 90 Am. J. IInt'l L. 590 (1996)

14 In "The Heritage of States—the Principle of Uti Possedetis Juris Today (1996) 67 Brit. Y.B. Int'l L. 75, Professor Malcolm Shaw (Barrister, Sir Robert Jennings Professor of International Law, University of Leicester) reviews the content, background and modern application of this legal principle.

15 Bell A. and Kontorovich E., "Palestine, Uti Possidetis Juris and the Borders of Israel", Submission Draft, August 2016. The Egypt and Jordan Peace Treaties confirm that the Mandate boundaries constitute international legal boundaries.

16 See Appendix to this Brochure (The British Mandate "Map").

17 The Franco-British [Boundary] Convention of December 23, 1920.

18 Article 25 of the Mandate for Palestine and article 3 of the "Memorandum by the British Representative" to the Mandate for Palestine. The line demarcating the southern boundary of Palestine was established in 1906.

19 The Armistice Agreement with Jordan covered the armistice with Iraq.

20 The cease-fire boundaries agreed under these Armistice Agreements have come to be known as the Green Line, because

lying status (sovereignty) of the territories concerned. They were not intended to constitute permanent international borders, and they certainly did not have that effect. In particular, Article 2 of the Armistice Agreement between Israel and Transjordan states, "no provision in this agreement shall in any way prejudice the rights, claims and positions of either party hereto in the ultimate peaceful settlement of the Palestine question."[21]

2.4 Resolution 242

Any measure that gives recognition to the "Green Line" as a border would conflict with the UN Security Council Resolutions 242 and 338. In these resolutions, the Security Council affirmed the way to peace is through negotiations in which the interests and rights of all parties are protected. According to the Security Council:

> The fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East, which should include the application of both the following principles:
> i. Withdrawal of Israeli armed forces from territories occupied in the recent conflict;
> ii. Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.[22]

This carefully worded resolution does not require the removal of all Israeli armed forces from the territories over which Israel gained control in the Six-Day War. Further, the deliberate use of the word "territories" (instead of "the territories") means that the Security Council also did not intend to require Israel to return to the 1949 Armistice lines. Rather, Resolution 242 reflects the understanding that the 1949 Armistice Lines did not represent secure borders for Israel. The purpose of the resolution was thus to encourage Israel and its neighboring states to negotiate recognized and secure national borders to replace the provisional armistice lines.[23]

The 1949 Armistice Lines do not constitute secure borders and do not reflect the continuing legal claim of Israel and the Jewish people to Jerusalem and the territory of the West Bank. From a military security perspective, the 1949 Armistice Lines are virtually indefensible. Given Israel's narrow geographical dimensions and the strategic position of the West Bank, any future attack launched from territories in the "West Bank" outside the 1949 Armistice Lines against Israel's nine-mile-wide waist could easily split the country in two.

These principles set out in Resolution 242 and 338 form the basis for the Oslo Agreements, which (despite the breakdown of negotiations and, arguably, breaches of their terms by both sides) remain valid and applicable today.

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of the colour of the ink used when the lines were being drawn during the negotiations.

21 Article 2, Armistice Agreement between Israel and Transjordan.

22 See Res. 242 in Appendix.

23 Id.

2.5 The International Law of Belligerent Occupation

2.5.1 The International Law of Belligerent Occupation Does Not Apply to the Post-1967 Territories

In 1967, Israel elected not to annex the West Bank, Golan Heights, and Gaza, but decided voluntarily apply international humanitarian law to the occupied territories, in particular the Fourth Geneva Convention. Israel's "occupation" of the disputed territories does not fall under the classic definition of military (belligerent) occupation at all; thus, the Fourth Geneva Convention is not obligatory to Israel as a matter of law.

Jordan illegally controlled the West Bank between 1949 and 1967, having acquired control as a result of an illegal act of aggression. Its subsequent purported annexation of this territory was not sufficient to give it rights over this territory. In other words, Jordan had no territorial sovereignty over the West Bank between 1948 and 1967. As a result, when Israel defeated the Jordanian forces and regained control of this territory in June 1967, it was not a question of Israel taking control of "the territory of a High Contracting Party" [i.e. another State] within the meaning of the Fourth Geneva Convention. Professor Julius Stone, a foremost authority on the Geneva Conventions and the obligations of States in times of war, expressed the following:

> [B]ut the Convention itself does not by its terms apply to these territories. For, under Article 2, the Convention applies 'to cases of . . . occupation of the territory of a High Contracting Party, by another such Party.' Insofar as the West Bank at present held by Israel does not belong to any other State, the Convention would not seem to apply to it at all. This is a technical, though rather decisive, legal point.[24]

The Fourth Geneva Convention in 1949 changed the focus of the international law of occupation by giving greater attention to the rights of the population of the occupied territory; however, it did not change the notion of "occupation" itself. In our view, the law of occupation is not applicable in situations where there is no sovereign power that has been "ousted" from the territory. As Benvenisti stated, "The foundation upon which the entire law of occupation is based is the principle of inalienability of sovereignty through the actual or threatened use of force . . . . From the principle of inalienability of sovereignty over a territory spring the constraints that international law imposes on the occupant."[25] The purpose of the law of belligerent occupation is not only to protect civilians from the occupying army, but it is also (and perhaps primarily) to "safeguard the reversionary rights of the ousted sovereign."[26] In situations (like the West Bank and Gaza) where there was no "ousted sovereign," there can accordingly be no question of "occupation" within the meaning of international humanitarian law.

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24 Lacey, I. (ed.), International Law and the Arab-Israel Conflict—extracts from Israel and Palestine—Assault on the law of nations by Julius Stone, second edition with additional material and commentary updated to 2003.

25 Eyal Benvenisti, The International Law of Occupation (1993), pages 5-6. Cited by Avinoam Sharon, "Why is Israel's Presence in the Territories still called "Occupation"?" Jerusalem Centre for Public Affairs.

26 Yehuda Z. Blum, "The missing reversioner: reflections on the status of Judea and Samaria", 3 Is.L.Rev. 279, 293 (1968).

2.5.2 Even If (Arguendo) the Law of Belligerent Occupation Applies, It Does Not Make Occupation Per Se "Illegal"

As ICJ Judge Rosalyn Higgins stated, "[t]here is nothing in either the Charter or general international law which leads one to suppose that military occupation pending a peace treaty is illegal."[27] The law of occupation simply means that any State that, as a result of war or conflict, takes control of neighboring territory belonging to (or claimed by) another State is required to administer that territory temporarily until the conflict has been terminated and a peace treaty has been negotiated. In the meantime, the "occupier" is subject to certain strict obligations that are primarily directed at protecting the civil population in that territory. But the occupation itself is not illegal.

2.5.3 Even If (Arguendo) the Law of Belligerent Occupation Applies, Jewish Settlements in Occupied Territories Are Not Per Se Forbidden under International Law

The claim that settlements are illegal rests entirely on Article 49(6) of the Fourth Geneva Convention. This provision is part of a complex set of rules governing the conduct of occupying powers. Article 49(6) provides that "[t]he Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."[28] The word "transfer" is arguably limited to direct coercion on the part of the occupying power of the person who is being transferred. That Article 49(6) is limited in this sense is supported by the fact that the drafters of the Rome Statute of the Criminal Court in 2002 felt it necessary to insert the words "directly or indirectly" in the equivalent provision, which was intended as "a snub to Israel."[29] While Israel has stimulated and facilitated many settlements in the West Bank since 1967, Israeli citizens have never been "deported" or forcibly "transferred" to the territories that Israel regained in 1967.

With the exception of military outposts, all of the Israelis who have moved into these areas since 1967 have done so voluntarily—they have not been "coerced" or "forced" to do so by the Israeli government.

Under international law as embodied in the Mandate for Palestine, Jews were *permitted* and even *encouraged* to settle in *every part* of Palestine—including "East Jerusalem" and what later became known as the "West Bank."[30] Jews living in those territories were forcibly removed, and their possessions destroyed, by the Jordanians from 1949-1967. Many Jews, who established their homes in the West Bank after 1967, were returning to lands from which their forefathers had been evicted in 1947-49.

Even if this provision is widely interpreted to include the *facilitation* of population movements, not all settlements have been facilitated or supported by the State of Israel. There

27 Rosalyn Higgins, "The Place of International Law in the Settlement of Disputes by the Security Council," 64 Am.J.Int'l.L. (1970) 1-18, at 8.

28 Article 49 of the Fourth Geneva Convention.

29 Article 8(2)(b)(viii) of the Rome Statute defines as a war crime the "transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies"; R. Cryer, Prosecuting International Crimes: Selectivity and the International Criminal Law Regime 274 (2005).

30 Article 6 of the Mandate for Palestine.

are many different kinds of "settlements" in Area C. A significant percentage of settlements have been financed and constructed without government support. Many have been built on private land owned by Jews prior to 1948 (in some cases prior to the Mandate), or on private land purchased since 1967 for full market value, without government support. "When settlers act entirely in their own initiative, when they do not arrogate for themselves land belonging to others or expropriated from its rightful owners, and when they do not benefit from any overt or covert government inducement, neither the letter nor the spirit of Article 49 (sixth paragraph) comes into play."[31] Accordingly, qualifying all the Jewish communities in "East Jerusalem" and the "West Bank" as "illegal" both misinterprets and grossly oversimplifies the spirit and letter of Article 49(6) of the Fourth Geneva Convention.[32]

In this respect, it is important to note that Israel has forcibly removed Israeli citizens from parts of the territories over which it gained control in 1967. The whole of the Sinai was transferred to Egypt following the 1979 Camp David agreements; and over 8000 Israeli citizens were removed from the Gaza Strip in 2005. Further, under Israeli law privately owned land can not be part of a settlement unless the land in question has been confiscated for military purpose, and several Israeli "settlements" in the West Bank have been dismantled by the Israeli authorities.

2.6 The Parties' Rights and Obligations under the Oslo Accords

Both the recognition of the 1949 Armistice Lines as borders and the recognition of Palestine as a state conflict with the terms of the Oslo Accords, which remain binding on Israel, the PLO, and the states and international institutions that witnessed the agreements.[33]

Although the interim period has expired and no final status agreement has been reached, the Oslo Agreements are still valid and binding on the parties involved.

The complex arrangements made under the Oslo Agreements have arguably resulted in a special legal regime (*lex specialis)* in relation to the "post-1967" territories. As instruments of international law, they impose mutual rights and obligations, limiting the application of general principles of law.[34] The Oslo Agreements arguably limit the scope of the Arab Palestinian right to self-determination. Given that Israel retains all "residual" powers not explicitly transferred to the Palestinian Council, it is arguable that—pending final agreement—the Oslo Arrangements do not affect Israel's underlying claims to territorial sovereignty with respect to territories outside the Green Line.[35]

31 See Dinstein, Yoram, The International Law of Belligerent Occupation, Cambridge 2009, page 241. A similar conclusion is reached by Professor James Crawford SC in his Opinion on Third Party Obligations with respect to Israeli Settlements in Palestinian Occupied Territories, January 24, 2012, available at: http://www.tuc.org.uk/sites/default/files/tucfiles/LegalOpinionIsraeliSettlements.pdf (accessed December 9, 2014).

32 See e.g. Crawford, Opinion, January 24, 2012, op. cit.

33 United States, the European Union, Russia, Egypt, Jordan and Norway.

34 There is much discussion about the exact nature of these documents. Notwithstanding the fact that the PLO is not a State, it seems to be generally accepted that these agreements are governed by international law. They are binding on the parties, and may even constitute treaties in the sense of the 1969 Vienna Convention on the Law of Treaties.

35 As described above, Israel considers that it still has a "claim to sovereignty" over the West Bank, and that this area is not de jure "occupied territory" in the sense of the Fourth Geneva Convention. See Singer, J. "Aspects of Foreign Relations Under the Israeli-Palestinian Agreements on Interim Self-Government Arrangements for the West Bank and Gaza", Israel

The Interim Agreement (1995) prohibits both parties from initiating "any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations."[36] The future status of these territories and the nature of an independent Palestinian entity can only be settled through negotiations reflecting a balance of competing interests. Provided the parties act in good faith, no specific solution to these issues can be imposed without the mutual consent of both Israel and the Palestinian-Arab people, and any attempts to have such a solution imposed would be in breach of the Oslo Accords. For this reason, the actions of the PLO to seek recognition of Palestine within the UN—based on the "pre-1967 borders"—are in breach of the Oslo Accords. Equally, recognition of "Palestine" in such a way as to compromise Israel's claims to territorial sovereignty with respect to the West Bank by the EU (or its Member States), Russia, the USA, Egypt, Jordan, or Norway would arguably breach their obligations under the Oslo Accords.

It is often argued that the construction of settlements in Jerusalem or other parts of the West Bank constitutes a "step" that will "change the status of the West Bank pending the outcome of permanent status negotiations."[37] In our submission, the construction or expansion of physical buildings in these territories does not change the status of the West Bank. The question of the settlements is an issue explicitly reserved for permanent status negotiations, together with "Jerusalem, refugees, security arrangements, borders, relations and cooperation with other neighbors and other issues of common interest."[38] Pending successful negotiation on those issues, Israel retains full power and responsibility within Area C (including Jerusalem). This includes zoning and planning responsibilities. As demonstrated in the Camp David negotiations in 2000, Israel has repeatedly indicated that it is willing, as part of a final agreement, to give up control over large parts of the West Bank that include Israeli settlements.

By explicitly incorporating Resolutions 242 and 338 into the DOP and Interim Agreement, Israel and the Palestinians recognize that any outcome of the negotiations must comply with the criteria set out in those resolutions. Specifically, they recognize that Israel is not required to withdraw from all of the "post-1967" territories. Further, any future Palestinian entity must not endanger the territorial integrity or political independence of Israel (or any other State).[39]

2.7 The Rights of the State of Israel to Territorial Integrity/Inviolability, Political Independence and Secure Borders

Article 2(4) of the UN Charter provides, "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence

LR 28 (1994) 268 at 276.

36 Article XXXI(7) of the Interim Agreement.

37 Id.

38 Article V(3) of the DOP.

39 Becker, T. "Self-determination in Perspective: Palestinian Claims to Statehood and the Relativity of This Right to Self-Determination",(1998) 32 Isr. L. Rev. 301, pp. 347-352.

of any state, or in any other manner inconsistent with the Purposes of the United Nations."[40] The principle of territorial integrity and political independence is part of the foundation of the Westphalian State system and has long been established in the contemporary system of international law on the use of force. As such, it is embodied in the Charter of the United Nations and customary international law. The International Court of Justice stated, "[t]he principle of territorial integrity is an important part of the international legal order and is enshrined in the Charter of the United Nations, in particular in Article 2, paragraph 4."[41] While there are those today who would challenge this worldview, as a matter of law it is difficult to discern any weakening of the principle of territorial integrity.[42]

The concept of territorial integrity under Article 2(4) of the UN Charter is expounded on in other important declarations of the UN General Assembly, including the Friendly Relations Declaration and the Definition of Aggression.[43] The words "against the territorial integrity and political independence of any state" were inserted into Article 2(4) of the Charter "in order to emphasize the importance of not infringing on territorial integrity and political independence; and they cannot be interpreted (as is occasionally suggested) as limiting the non-use of force principle embodied in the Charter."[44]

Israel's right, as a UN member state, to territorial integrity is reflected in Security Council Resolutions 242 and 338 which require negotiation of peace based on "[t]ermination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force."

The PLO has failed to demonstrate that it is able and willing to comply with these requirements. Under the Palestinian National Charter, the PLO remains committed to the liberation of all of Palestine—including the territories now covered by the State of Israel. Further, there is a very real possibility that anti-Israel *jihadic* elements within Arab-Palestinian society will use a new Palestinian state—over which neither Israel nor any other state will have the right to interfere in internal matters—as a platform to launch further attacks on Israel. With Hamas in Gaza, the rise of ISIS, the Muslim Brotherhood, and other extremist Islamic groups in Egypt, Syria, Iraq, Libya, and other countries in the region, there are sufficient grounds to fear that anti-democratic, *jihadic* forces would control a newly created Arab-Palestinian state. These movements by definition deny the right of the Jewish people to exist as a sovereign nation and are committed to the use force against the Jewish people, thereby threatening Israel's territorial integrity and political independence.

40 See Article 2(4) of the UN Charter in Appendix.

41 International Court of Justice, Accordance with international law of the unilateral Declaration of Independence of Kosovo, Advisory Opinion, ICJ Reports (2010), para. 80.

42 For example, it was concern for territorial integrity and the stability of borders that led the Organization of African Unity (now the AfricanUnion) to insist upon the maintenance of the colonial borders as at independence. Indeed, international law still affords a central placeto the principle of territorial integrity. See Michael, Wood. The Princeton Encyclopedia of Self-Determination. Territorial Integrity. http://pesd.princeton.edu/?q=node/271.

43 Friendly Relations Declaration (1970); Definition of Aggression (1974).

44 Michael, Wood. The Princeton Encyclopedia of Self-Determination. Territorial Integrity. http://pesd.princeton.edu/?q=node/271.

2.8 Protecting the Unique Status of Jerusalem

The Old City of Jerusalem is the most sacred place in the world for Jews and contains many holy sites for Christians and Muslims. In many resolutions since 1967, the Security Council has emphasized, "the specific status of Jerusalem and, in particular, the need for protection and preservation of the unique spiritual and religious dimension of the Holy Places in the city."[45] The UN has a special obligation to ensure that the *whole of Jerusalem* remain a City for all faiths.

The questions are: Who is most capable of protecting and preserving the unique spiritual and religious dimension of the City of Jerusalem? And, who can ensure that Jews, Christians, and Muslims can have full access to their Holy Places? Islamic regimes have proven that they *cannot* guarantee such protection and preservation. For example, Jordan removed all Jews and destroyed all Jewish places of worship in the Old City of Jerusalem and the West Bank in the period from 1949-1967. Today, Jordan and the Palestinian leadership restrict access of Jews to the Temple Mount. Across the Middle East, since the creation of the State of Israel, the once-thriving Jewish communities have been decimated. Thousands of Christians are being discriminated against, persecuted, and killed, simply because they are considered "infidels." In accordance with the terms and spirit of the Palestinian National Charter, the Palestinian leadership has repeatedly and publicly declared it intends to apply Islamic law in Palestine, and evict all Jews from the proposed State of Palestine, including the Old City of Jerusalem.

The status of the Temple Mount (al-Haram al-Sharif) is illustrative. In 1967, Israel entrusted custodianship of the Muslim Holy Places on the Temple Mount to the Muslim Waqf in all matters except for external security. This was confirmed in the 1994 Peace Agreement between Israel and Jordan.[46] The Temple Mount (including the Western Wall) is of course a holy site not only for Muslims, but also for the Jewish people, as well as Christians. Recently, the Palestinians and Jordan have taken steps to further restrict access to the Temple Mount by Jews. According to an agreement[47] executed on March 31, 2013, between King Abdullah II of Jordan and the PLO/PA, the PLO/PA affirms recognition by the Arab Palestinians of the Hashemite King as custodian of the Islamic Holy Places in Jerusalem.[48] The agreement also recognizes Palestinian self-determination and sovereignty over the land where the Islamic Holy Places are situated. This agreement "affirms that all Muslims, now and forever, may travel to and from the Islamic Holy Sites and worship there, in conformance with the freedom of worship." The Waqf and its properties are to be administered "in accordance with the laws of the Hashemite Kingdom of Jordan." These arrangements contain no guarantees whatsoever that Jews or Christians will continue to have access to their holy places connected with the Temple Mount. On the contrary, they therefore shows that access will be limited to Muslims.[49] This agreement indicates that an Islamic State of Palestine is unlikely

45 See for example Security Council Resolutions 252 (1968), 476 (1980) and 478 (1980).

46 Treaty of Peace Between The State of Israel and The Hashemite Kingdom of Jordan art. 3, Isr.-Jordan, Oct. 26, 1994, 34 I.L.M. 43 (1995).

47 http://jordanembassyus.org/news/jordanian-palestinian-agreement-jointly-defend-al-masjid-al-aqsa.

48 In his capacity as descendant of the Sharif Hussein bin Ali of Mecca, who was Caliph of Islam for several months in 1924.

49 For more information about this agreement, see: Lapidoth, R. "A Recent Agreement on the Holy Places in Jerusalem," *Israel Journal of Foreign Affairs* VII:3 (2013), 61-70.

to protect the rights of Jews and Christians of access to their Holy Places in the Old City of Jerusalem.

In contrast, the Jewish State of Israel has demonstrated since 1967 that it is capable of ensuring that the Old City is governed in such a way that all faiths have full access to holy sites and can practice their religion freely.

2.9 UN Charter Principles

It is often argued that the removal of "settlers" from these territories is justified because the existence of Israeli citizens in these territories "threatens to make a two-state solution impossible."[50] There is no basis for this conclusion. The mere *existence* of Israeli persons or enterprises in the "territories" cannot—in and of itself—threaten the creation of a Palestinian state. Just as the existence of Arabs in the territory of Israel does not make a Jewish State of Israel impossible, in the same way, the existence of Jews in the "Occupied Territories" does not threaten or prevent the existence of an Arab-Palestinian state on those territories. Some have argued that the settlements result from a policy of "creeping expropriation."[51] It is a matter of debate whether this argument holds any weight with regard to some of the infrastructure development; however, it is definitely not true of all individual Jewish persons and enterprises in the "Occupied Territories." On the contrary, there are many examples of Jewish persons and enterprises in these territories *assisting and promoting* Palestinian development and self-determination (e.g. many Jewish-Arab partnerships, and thousands of Arab Palestinians owe their livelihood to Jewish businesses in the "Occupied Territories"). The existence of Jewish persons and enterprises in the territories would only be a hindrance to the creation of a Palestinian state, if the proposed Arab-Palestinian state required an ethnic cleansing of Jewish persons.

Further difficulties are presented by the recognition of the PLO as the "sole legitimate representative of the Palestinian people."

- There is no guarantee that the PLO in its current form will remain the governing power in a new Palestinian state. It is very likely Hamas or a similar Islamic extremist movement would gain control. Under its Charter, Hamas is committed to the use of armed force against Israel and the Jewish people.[52]
- PA President Abbas has repeatedly stated there will be no place for Jews in the new Palestinian state.[53] The PA and PLO facilitate education and media propaganda, which promote terrorism, hatred, and negative attitudes towards Jews.

50 See "Statement on the publication of tenders to expand Israeli settlements in Ramot and Pisgat Ze'ev" by the High Representative of the EU for Foreign Affairs and Security Policy on 8th November 2012 (A 497/12).

51 See eg. Crawford, Opinion, 2006, op. cit.

52 See Hamas Charter in Appendix.

53 See http://www.jpost.com/Middle-East/Abbas-wants-not-a-single-Israeli-in-future-Palestinian-state-321470 (last visited November 12, 2014).

- The PLO remains committed under the Palestinian National Charter to the use of "jihad" to achieve the liberation of "all of Palestine," which effectively means the destruction of Israel as a Jewish State.[54]

By recognizing the PLO as the representative of the Palestinian people, the international community is therefore condoning (a) denial of the legitimacy of the Jewish people as a nation with a right to self-determination; (b) ethnic cleansing of "Palestine" of Jews; and, (c) systemic discrimination. This not only conflicts with the obligations entered into by many states under the Mandate for Palestine in 1922, but also breaches UN Charter principles, in particular:[55]

- The dignity and worth of the human person, in the equal rights of men and women and of nations large and small;
- the establishment of "conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained;
- to practice tolerance and live together in peace with one another as good neighbors; and
- to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest.[56]

2.10 "Palestine" under International Law

"Palestine" is not (yet) a state under international law. First, it is important to note that the right to self-determination under international law is not absolute. The exercise of the right of self-determination of a people may result in different forms of autonomy within the territory of a state. "The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people."[57] No people has an automatic "right" to statehood.

Second, states only exist under international law if they satisfy certain objective criteria. One of the most important of these is the existence of an effective governing authority. "Palestine" does not have a governing authority that is capable of governing the whole of the claimed Palestinian territories effectively and independently:[58]

54 See Appendix; Despite commitments made by Yasser Arafat on behalf of the PLO upon signing the Oslo Accords in 1993 to amend the Charter in order to remove provisions inconsistent with the terms of the Oslo Accords, the 1968 version of the Palestinian National Charter has never been formally amended.

55 See Preamble of the UN Charter.

56 UN Charter.

57 GA Res. 2625 (XXV); This resolution adopted in 1970 included the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations.

58 See generally on the criteria for statehood: Crawford, James The Creation of States in International law, 2nd edition, Clarendon Press, 2006.

- Although civil control has been handed over to the Palestinian authorities in Areas A and B, and internal security control in Area A, under the Oslo Accords Israel retains responsibility for essential matters such as external security and external relations throughout the whole of the West Bank. The regime established under the Oslo agreements is "that of a Palestinian autonomy under the supreme authority of the Israeli military government."[59] Notwithstanding the withdrawal of the military regime and transfer of extensive powers, Israel still retains "reversionary" powers in Areas A and B.
- Under the Oslo agreements, Palestinian power and authority have been carefully (and intentionally) fragmented. The PLO retains power and claims ultimate authority as "sole legitimate representative of the Palestinian people." The jurisdiction of the Palestinian Authority is extremely limited, being wholly derived from both the PLO and Israel, pursuant to the terms of the Interim Agreement. The PA does not have authority outside the terms of that agreement.
- The PLO lost power in the Gaza Strip, where Hamas has assumed power in a bitter, fratricidal conflict. The PLO and/or Palestinian Authority do not have control over the whole of the territory claimed to be "Palestine."

Third, the fact that over 130 states have officially recognized Palestine as a state does not make Palestine a state. There is a fundamental distinction between the legitimate existence (and creation) of states and their recognition. A state may exist as a matter of fact and may be legitimate as a matter of law without being recognized as such. Conversely, a "state" may be recognized by many (even a majority of) other states and still not exist as a matter of fact or law.

Fourth, the UN General Assembly does not have the authority or power to recognize or create "states" that do not otherwise exist under international law. UN General Assembly Resolution of November 29, 2012 changing the PA's status within the UN from an "Entity" with "Observer" status to a "Non-member State" with Observer status could not and did not affect the status of Palestine.[60]

Finally, the PLO and PA do not satisfy the conditions of Article 4 of the UN Charter requires UN Member States, inter alia, to be "peace loving," and to be able and willing to carry out all obligations under the UN Charter.[61] Although these are not strictly-speaking conditions for statehood, given the political context of the Israel/Palestine conflict it would be unwise for the UN Security Council or individual UN member states to recognize "Palestine" as a state if it is unable to meet the criteria for UN membership. It is clear that "Palestine" fails to meet these criteria. Notwithstanding their formal statements, significant elements of Palestinian society remain committed to *jihad*, violence, and terror. The Palestinian National Charter still advocates *jihad* and some PLO leadership openly support the use of

59 Singer, J. "The West Bank and Gaza Strip: Phase Two, Justice", The International Association of Jewish Lawyers and Jurists No. 7, December 1995, 5-17 at 8. Cited by Malanczuk, P. "Some Basic Aspects of the Agreements between Israel and the PLO from the Perspective ofInternational law", 7 EJIL (1996) 485-500.

60 In fact no organization or tribunel is able to make a definitive, binding determination on whether or not "Palestine" constitutes a state.

61 Article 4 of the UN Charter.

violence towards Israel and the Jewish people. Consequently, it is highly doubtful whether the PLO as a single entity purporting to represent all the constitutive elements of Palestinian society is genuinely "peace-loving."[62]

62 See Palestinian National Charter in Appendix.

3. Conclusions and Recommendations

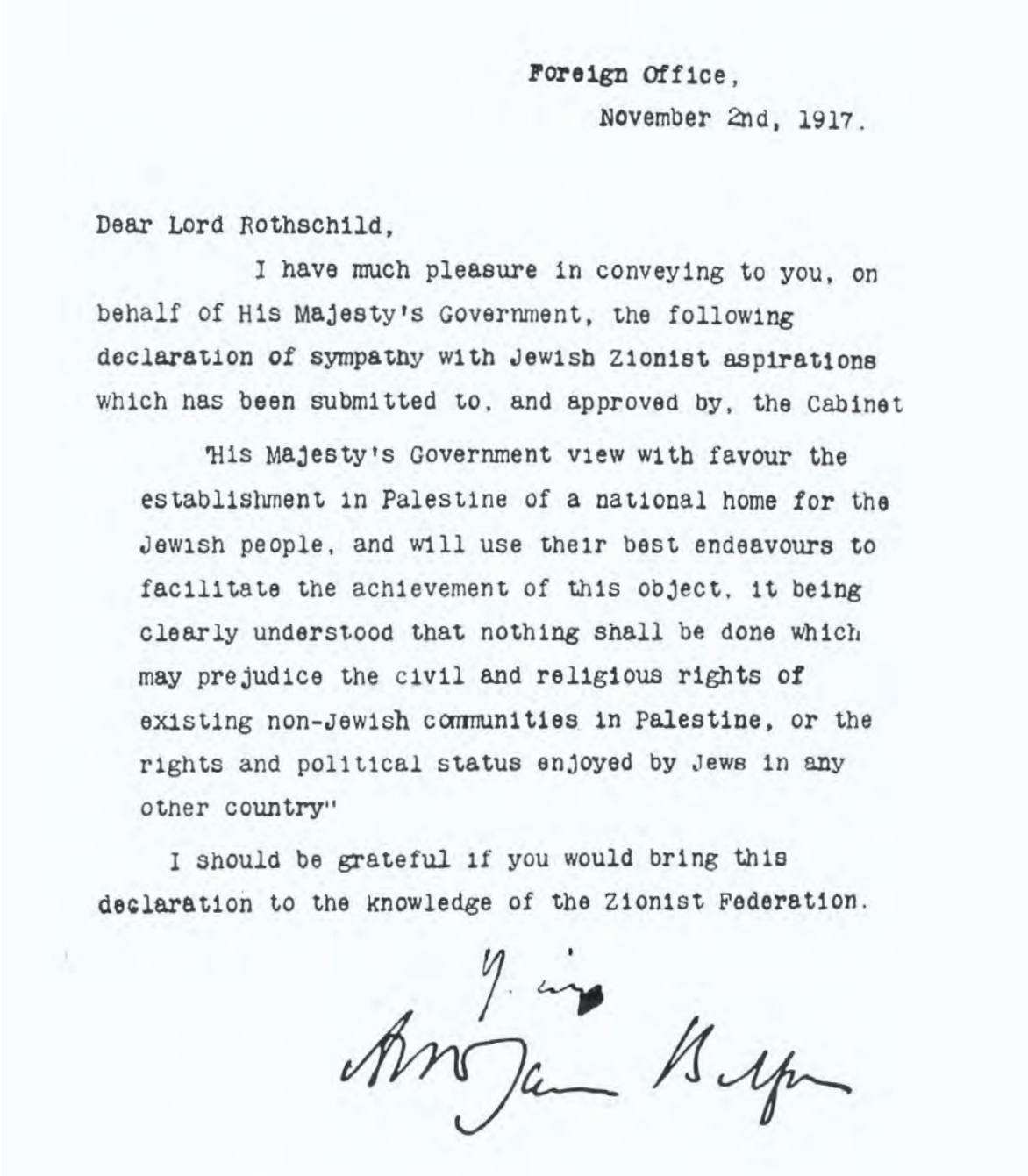
From the foregoing, a number of conclusions can be suggested concerning the application of public international law to these territories:

1. International law applicable to the West Bank is extremely complex and controversial. International law does not provide "cut-and-dried" solutions to the conflict between Israel and its neighbors in relation to these territories. Care should be taken to avoid generalizations. When referring to international law, it is essential to specify precisely which actions by the State of Israel are considered to be in breach of international law. For the reasons set out below, blanket statements that "the settlements are illegal" completely fail to take account of these complexities.
2. Israel has potentially legitimate claims to territorial sovereignty (title) with respect to all of the territory included in the former Mandate for Palestine. This covers all of the West Bank (including East Jerusalem).
3. In light of these (potential) claims, and Israel's rights to "territorial integrity," neither the United Nations, the EU nor any other party or organization has the jurisdiction to impose any legally-binding "solution" with respect to these territories without Israel's consent.
4. The International Court of Justice (ICJ) also does not have jurisdiction to make legally-binding determinations concerning these territories without Israel's consent.
5. Given Israel's potentially legitimate sovereign territorial claims with respect to all or part of these territories, it is inaccurate and misleading to refer to them as "Palestinian" in so far as this is intended to imply that these territories are part of the sovereign territory of another people or State.
6. Although the West Bank is (almost) universally referred to as "occupied" (including by Israel itself—at least for the territories outside Jerusalem), the international law of belligerent occupation arguably does not apply to the West Bank.
7. But even if the West Bank does constitute "occupied" territory within the meaning of the law of occupation, that law does not prohibit occupation as such. It does not require Israel to "withdraw" its military personnel or its citizens from the West Bank pending the finalization of a negotiated peace treaty.
8. The international law of belligerent occupation only prohibits specific kinds of conduct by occupying States. At best, it could be argued that article 49(6) of the Fourth Geneva Convention prohibits the State of Israel from taking measures to transfer (or encourage the transfer of) Israeli citizens from Israel to the West Bank.

9. But even on this reading, international law only applies to the activities of the State of Israel. It does not prohibit or restrict the right of Israeli citizens to settle voluntarily in the West Bank, or to move in and out of, or to conduct activities or build houses or other infrastructure in, the West Bank.
10. While the "Palestinians" arguably have a right to self-determination, international law does not mandate the establishment of a "Palestinian" state next to Israel. The "two-state" solution is a political goal, not a legal requirement. It is therefore invalid to claim that settlements are "illegal" because they somehow frustrate the establishment of a Palestinian state.
11. It is also incorrect to state or imply that "Palestine" is already a state.
12. Additional considerations are raised by the unique status of Jerusalem. The fact that "East Jerusalem" contains sites regarded as holy by Jews, Christians and Moslems raises additional issues of concern. In particular, no steps should be taken that would limit the freedom of members of any of these religions to access their holy places. Allowing East Jerusalem to come under the exclusive control of an Islamic state would by definition arguably result in the illegitimate restriction of the rights of Christians and Jews to access these holy sites.
13. Israel and the PLO remain bound by the terms of the Oslo Accords. Until such time as these binding agreements are revoked, they provide the legal framework for the settlement of disputes between Israel and the PLO. Under the Oslo Accords, Israel and the PLO are both entitled and obliged to negotiate directly with each other concerning all "final status" issues, including Jerusalem, borders and settlements. Under Article XXXI of the Interim Agreement, neither party is entitled to take unilateral action that will "change the status" of the West Bank pending the outcome of permanent status negotiations.
14. The UN Security Council and General Assembly, the EU and individual member states have no authority to limit the rights of Israel and its citizens with respect to the West Bank, including "East Jerusalem." In fact, measures by the EU or United Nations organs to comply with PLO requests to change the status of the West Bank, or to impose limitations on the rights of Israel to negotiate as set out above, could arguably themselves constitute infringements of international law.

Appendices

I. The Balfour Declaration – November 2, 1917



Foreign Office,
November 2nd, 1917.

Dear Lord Rothschild,

I have much pleasure in conveying to you, on behalf of His Majesty's Government, the following declaration of sympathy with Jewish Zionist aspirations which has been submitted to, and approved by, the Cabinet

'His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country"

I should be grateful if you would bring this declaration to the knowledge of the Zionist Federation.

Yours

Arthur James Balfour

II. Article 22 of the Covenant of the League of Nations – June 28, 1919

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

III. San Remo Resolution – April 25, 1920

It was agreed –

(a) To accept the terms of the Mandates Article as given below with reference to Palestine, on the understanding that there was inserted in the proces-verbal an undertaking by the Mandatory Power that this would not involve the surrender of the rights hitherto enjoyed by the non-Jewish communities in Palestine; this undertaking not to refer to the question of the religious protectorate of France, which had been settled earlier in the previous afternoon by the undertaking given by the French Government that they recognized this protectorate as being at an end.

(b) that the terms of the Mandates Article should be as follows:

The High Contracting Parties agree that Syria and Mesopotamia shall, in accordance with the fourth paragraph of Article 22, Part I (Covenant of the League of Nations), be provisionally recognized as independent States, subject to the rendering of administrative advice and assistance by a mandatory until such time as they are able to stand alone. The boundaries of the said States will be determined, and the selection of the Mandatories made, by the Principal Allied Powers.

The High Contracting Parties agree to entrust, by application of the provisions of Article 22, the administration of Palestine, within such boundaries as may be determined by the Principal Allied Powers, to a Mandatory, to be selected by the said Powers. The Mandatory will be responsible for putting into effect the declaration originally made on November 8, 1917, by the British Government, and adopted by the other Allied Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country.

IV. The Mandate for Palestine – July 24, 1922 (Relevant Provisions)

The Council of the League of Nations

Whereas the Principal Allied Powers have agreed, for the purpose of giving effect to the provisions of Article 22 of the Covenant of the League of Nations, to entrust to a Mandatory selected by the said Powers the administration of the territory of Palestine, which formerly belonged to the Turkish Empire, within such boundaries as may be fixed by them; and

Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment in Palestine of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country; and

Whereas recognition has thereby been given to the historical connection of the Jewish people with Palestine and to the grounds for reconstituting their national home in that country; and Whereas the Principal Allied Powers have selected His Britannic Majesty as the Mandatory for Palestine; and Whereas the mandate in respect of Palestine has been formulated in the following terms and submitted to the Council of the League for approval; and Whereas His Britannic Majesty has accepted the mandate in respect of Palestine and undertaken to exercise it on behalf of the League of Nations in conformity with the following provisions; and

Whereas by the afore-mentioned Article 22 (paragraph 8), it is provided that the degree of authority, control or administration to be exercised by the Mandatory, not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations;

Confirming the said mandate, defines its terms as follows:

Article 1—The Mandatory shall have full powers of legislation and of administration, save as they may be limited by the terms of this mandate.

Article 2—The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and the development of self -governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion.

Article 3—The Mandatory shall, so far as circumstances permit, encourage local autonomy.

Article 4—An appropriate Jewish agency shall be recognised as a public body for the purpose of advising and co-operating with the Administration of Palestine in such economic, social and other matters as may affect the establishment of the Jewish national home and the interests of the Jewish population in Palestine, and, subject always to the control of the Administration, to assist and take part in the development of the country.
The Zionist organisation, so long as its organisation and constitution are in the opinion of the Mandatory appropriate, shall be recognised as such agency. It shall take steps in consultation with His Britannic Majesty's Government to secure the cooperation of all Jews who are willing to assist in the establishment of the Jewish national home.

Article 5—The Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of, the Government of any foreign Power.

Article 6—The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage, in co-operation with the Jewish agency. referred to in Article 4, close settlement by Jews, on the land, including State lands and waste lands not required for public purposes.

V. Article 80 of the United Nations Charter – June 26, 1945

Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

VI. UN Security Council Resolution 242 – November 22, 1967

November 22, 1967

The Security Council,

Expressing its continuing concern with the grave situation in the Middle East,

Emphasizing the inadmissibility of the acquisition of territory by war and the need to work for a just and lasting peace in which every State in the area can live in security,

Emphasizing further that all Member States in their acceptance of the Charter of the United Nations have undertaken a commitment to act in accordance with Article 2 of the Charter,

1. Affirms that the fulfillment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:
   a. Withdrawal of Israeli armed forces from territories occupied in the recent conflict;
   b. Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force;

2. Affirms further the necessity—
   a. For guaranteeing freedom of navigation through international waterways in the area;
   b. For achieving a just settlement of the refugee problem;
   c. For guaranteeing the territorial inviolability and political independence of every State in the area, through measures including the establishment of demilitarized zones;

3. Requests the Secretary General to designate a Special Representative to proceed to the Middle East to establish and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles in this resolution;

Requests the Secretary-General to report to the Security Council on the progress of the efforts of the Special Representative as soon as possible.

VII. Relevant Provisions of the Palestinian National Charter (as Revised in 1968)

Article 1: Palestine is the homeland of the Arab Palestinian people; it is an indivisible part of the Arab homeland, and the Palestinian people are an integral part of the Arab nation.

Article 2: Palestine, with the boundaries it had during the British Mandate, is an indivisible territorial unit.

Article 3: The Palestinian Arab people possess the legal right to their homeland and have the right to determine their destiny after achieving the liberation of their country in accordance with their wishes and entirely of their own accord and will.

Article 4: The Palestinian identity is a genuine, essential, and inherent characteristic; it is transmitted from parents to children. The Zionist occupation and the dispersal of the Palestinian Arab people, through the disasters which befell them, do not make them lose their Palestinian identity and their membership in the Palestinian community, nor do they negate them.

Article 5: The Palestinians are those Arab nationals who, until 1947, normally resided in Palestine regardless of whether they were evicted from it or have stayed there. Anyone born, after that date, of a Palestinian father—whether inside Palestine or outside it—is also a Palestinian.

Article 6: The Jews who had normally resided in Palestine until the beginning of the Zionist invasion will be considered Palestinians.

Article 7: That there is a Palestinian community and that it has material, spiritual, and historical connection with Palestine are indisputable facts. It is a national duty to bring up individual Palestinians in an Arab revolutionary manner. All means of information and education must be adopted in order to acquaint the Palestinian with his country in the most profound manner, both spiritual and material, that is possible. He must be prepared for the armed struggle and ready to sacrifice his wealth and his life in order to win back his homeland and bring about its liberation.

Article 8: The phase in their history, through which the Palestinian people are now living, is that of national (watani) struggle for the liberation of Palestine. Thus the conflicts among the Palestinian national forces are secondary, and should be ended for the sake of the basic conflict that exists between the forces of Zionism and of imperialism on the one hand, and the Palestinian Arab people on the other. On this basis the Palestinian masses, regardless of whether they are residing in the national homeland or in diaspora (mahajir) constitute—both their organizations and the individuals—one national front working for the retrieval of Palestine and its liberation through armed struggle.

Article 9: Armed struggle is the only way to liberate Palestine. This it is the overall strategy, not merely a tactical phase. The Palestinian Arab people assert their absolute determination and firm resolution to continue their armed struggle and to work for an armed popular revolution for the liberation of their country and their return to it. They also assert their right to normal life in Palestine and to exercise their right to self-determination and sovereignty over it.

Article 10: Commando action constitutes the nucleus of the Palestinian popular liberation war. This requires its escalation, comprehensiveness, and the mobilization of all the Palestinian popular and educational efforts and their organization and involvement in the armed Palestinian revolution. It also requires the achieving of unity for the national (watani) struggle among the different groupings of the Palestinian people, and between the Palestinian people and the Arab masses, so as to secure the continuation of the revolution, its escalation, and victory.

Article 11: The Palestinians will have three mottoes: national (wataniyya) unity, national (qawmiyya) mobilization, and liberation.

Article 12: The Palestinian people believe in Arab unity. In order to contribute their share toward the attainment of that objective, however, they must, at the present stage of their struggle, safeguard their Palestinian identity and develop their consciousness of that identity, and oppose any plan that may dissolve or impair it.

Article 13: Arab unity and the liberation of Palestine are two complementary objectives, the attainment of either of which facilitates the attainment of the other. Thus, Arab unity leads to the liberation of Palestine, the liberation of Palestine leads to Arab unity; and work toward the realization of one objective proceeds side by side with work toward the realization of the other.

Article 14: The destiny of the Arab nation, and indeed Arab existence itself, depend upon the destiny of the Palestine cause. From this interdependence springs the Arab nation's pursuit of, and striving for, the liberation of Palestine. The people of Palestine play the role of the vanguard in the realization of this sacred (qawmi) goal.

Article 15: The liberation of Palestine, from an Arab viewpoint, is a national (qawmi) duty and it attempts to repel the Zionist and imperialist aggression against the Arab homeland, and aims at the elimination of Zionism in Palestine. Absolute responsibility for this falls upon the Arab nation—peoples and governments—with the Arab people of Palestine in the vanguard. Accordingly, the Arab nation must mobilize all its military, human, moral, and spiritual capabilities to participate actively with the Palestinian people in the liberation of Palestine. It must, particularly in the phase of the armed Palestinian revolution, offer and furnish the Palestinian people with all possible help, and material and human support, and make available to them the means and opportunities that will enable them to continue to carry out their leading role in the armed revolution, until they liberate their homeland.

Article 16: The liberation of Palestine, from a spiritual point of view, will provide the Holy Land with an atmosphere of safety and tranquility, which in turn will safeguard the country's religious sanctuaries and guarantee freedom of worship and of visit to all, without discrimination of race, color, language, or religion. Accordingly, the people of Palestine look to all spiritual forces in the world for support.

Article 17: The liberation of Palestine, from a human point of view, will restore to the Palestinian individual his dignity, pride, and freedom. Accordingly the Palestinian Arab people look forward to the support of all those who believe in the dignity of man and his freedom in the world.

Article 18: The liberation of Palestine, from an international point of view, is a defensive action necessitated by the demands of self-defense. Accordingly the Palestinian people, desirous as they are of the friendship of all people, look to freedom-loving, and peace-loving states for support in order to restore their legitimate rights in Palestine, to re-establish peace and security in the country, and to enable its people to exercise national sovereignty and freedom.

Article 19: The partition of Palestine in 1947 and the establishment of the state of Israel are entirely illegal, regardless of the passage of time, because they were contrary to the will of the Palestinian people and to their natural right in their homeland, and inconsistent with the principles embodied in the Charter of the United Nations, particularly the right to self-determination.

Article 20: The Balfour Declaration, the Mandate for Palestine, and everything that has been based upon them, are deemed null and void. Claims of historical or religious ties of Jews with Palestine are incompatible with the facts of history and the true conception of what constitutes statehood. Judaism, being a religion, is not an independent nationality. Nor do Jews constitute a single nation with an identity of its own; they are citizens of the states to which they belong.

Article 21: The Arab Palestinian people, expressing themselves by the armed Palestinian revolution, reject all solutions which are substitutes for the total liberation of Palestine and reject all proposals aiming at the liquidation of the Palestinian problem, or its internationalization.

Article 22: Zionism is a political movement organically associated with international imperialism and antagonistic to all action for liberation and to progressive movements in the world. It is racist and fanatic in its nature, aggressive, expansionist, and colonial in its aims, and fascist in its methods. Israel is the instrument of the Zionist movement, and geographical base for world imperialism placed strategically in the midst of the Arab homeland to combat the hopes of the Arab nation for liberation, unity, and progress. Israel is a constant source of threat vis-a-vis peace in the Middle East and the whole world. Since the liberation of Palestine will destroy the Zionist and imperialist presence and will contribute to the establishment of peace in the Middle East, the Palestinian people look for the support of all the progressive

and peaceful forces and urge them all, irrespective of their affiliations and beliefs, to offer the Palestinian people all aid and support in their just struggle for the liberation of their homeland.

Article 23: The demand of security and peace, as well as the demand of right and justice, require all states to consider Zionism an illegitimate movement, to outlaw its existence, and to ban its operations, in order that friendly relations among peoples may be preserved, and the loyalty of citizens to their respective homelands safeguarded.

Article 24: The Palestinian people believe in the principles of justice, freedom, sovereignty, self-determination, human dignity, and in the right of all peoples to exercise them.

Article 25: For the realization of the goals of this Charter and its principles, the Palestine Liberation Organization will perform its role in the liberation of Palestine in accordance with the Constitution of this Organization.

Article 26: The Palestine Liberation Organization, representative of the Palestinian revolutionary forces, is responsible for the Palestinian Arab people's movement in its struggle—to retrieve its homeland, liberate and return to it and exercise the right to self-determination in it—in all military, political, and financial fields and also for whatever may be required by the Palestine case on the inter-Arab and international levels.

Article 27: The Palestine Liberation Organization shall cooperate with all Arab states, each according to its potentialities; and will adopt a neutral policy among them in the light of the requirements of the war of liberation; and on this basis it shall not interfere in the internal affairs of any Arab state.

Article 28: The Palestinian Arab people assert the genuineness and independence of their national (wataniyya) revolution and reject all forms of intervention, trusteeship, and subordination.

Article 29: The Palestinian people possess the fundamental and genuine legal right to liberate and retrieve their homeland. The Palestinian people determine their attitude toward all states and forces on the basis of the stands they adopt vis-a-vis to the Palestinian revolution to fulfill the aims of the Palestinian people.

Article 30: Fighters and carriers of arms in the war of liberation are the nucleus of the popular army which will be the protective force for the gains of the Palestinian Arab people.

VIII. Relevant Provisions of the Hamas Charter (1988)[63]

Article Five: *Dimensions of Time and Space of the Hamas*
As the Movement adopts Islam as its way of life, its time dimension extends back as far as the birth of the Islamic Message and of the Righteous Ancestor. Its ultimate goal is Islam, the Prophet its model, the Qur'an its Constitution.

Article Six: *Peculiarity and Independence*
The Islamic Resistance Movement is a distinct Palestinian Movement which owes its loyalty to Allah, derives from Islam its way of life and strives to raise the banner of Allah over every inch of Palestine. Only under the shadow of Islam could the members of all regions coexist in safety and security for their lives, properties and rights. In the absence of Islam, conflict arises, oppression reigns, corruption is rampant and struggles and wars prevail.

Article Eight: *The Slogan of the Hamas*
Allah is its goal, the Prophet its model, the Qur'an its Constitution, Jihad its path and death for the case of Allah its most sublime belief.

Article Eleven: *The Strategy of Hamas: Palestine is an Islamic Waqf*
The Islamic Resistance Movement believes that the land of Palestine has been an Islamic Waqf throughout the generations and until the Day of Resurrection, no one can renounce it or part of it, or abandon it or part of it. No Arab country nor the aggregate of all Arab countries, and no Arab King or President nor all of them in the aggregate, have that right, nor has that right any organization or the aggregate of all organizations, be they Palestinian or Arab, because Palestine is an Islamic Waqf throughout all generations and to the Day of Resurrection.

Article Thirteen: *Peaceful Solutions, [Peace] Initiatives and International Conferences*
[Peace] initiatives, the so-called peaceful solutions, and the international conferences to resolve the Palestinian problem, are all contrary to the beliefs of the Islamic Resistance Movement. For renouncing any part of Palestine means renouncing part of the religion; the nationalism of the Islamic Resistance Movement is part of its faith, the movement educates its members to adhere to its principles and to raise the banner of Allah over their homeland as they fight their Jihad: "Allah is the all-powerful, but most people are not aware."

63 The Hamas Charter, available at Yale Law School Lillian Goldman Law Library—Avalon Project: http://avalon.law.yale.edu/20th_century/hamas.asp.

Map 1: Israel in 2016

Map 2: The British Mandate

source: YESHA Council

Map 3: The Partition Plan (1947)

source: YESHA Council

Map 4: Israel after the Six-Day War (June 10, 1967)

source: YESHA Council

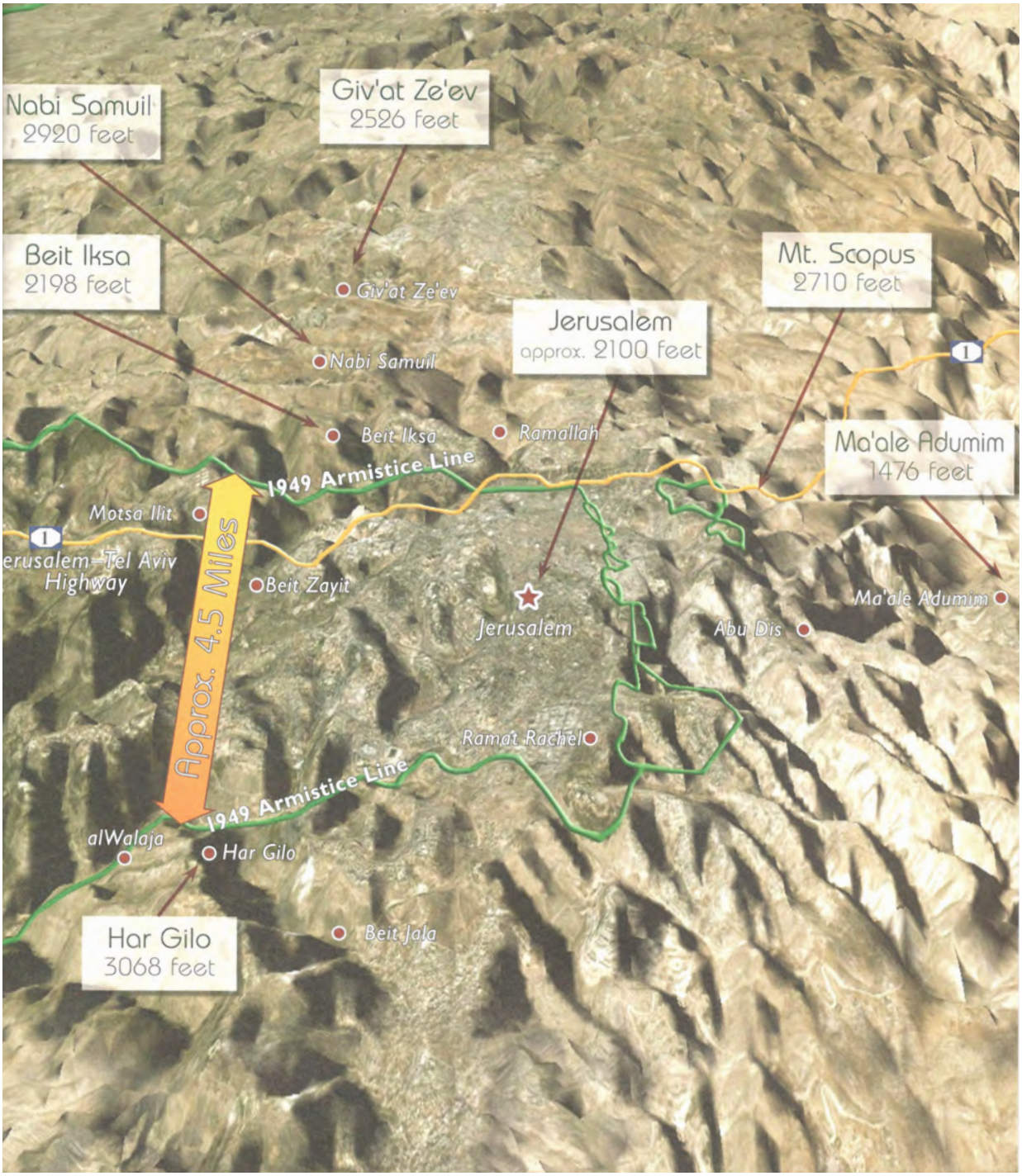
Map 5: The Oslo Agreements (1993)

source: YESHA Council

Map 6: Vulnerability of Israeli Cities

source: YESHA Council

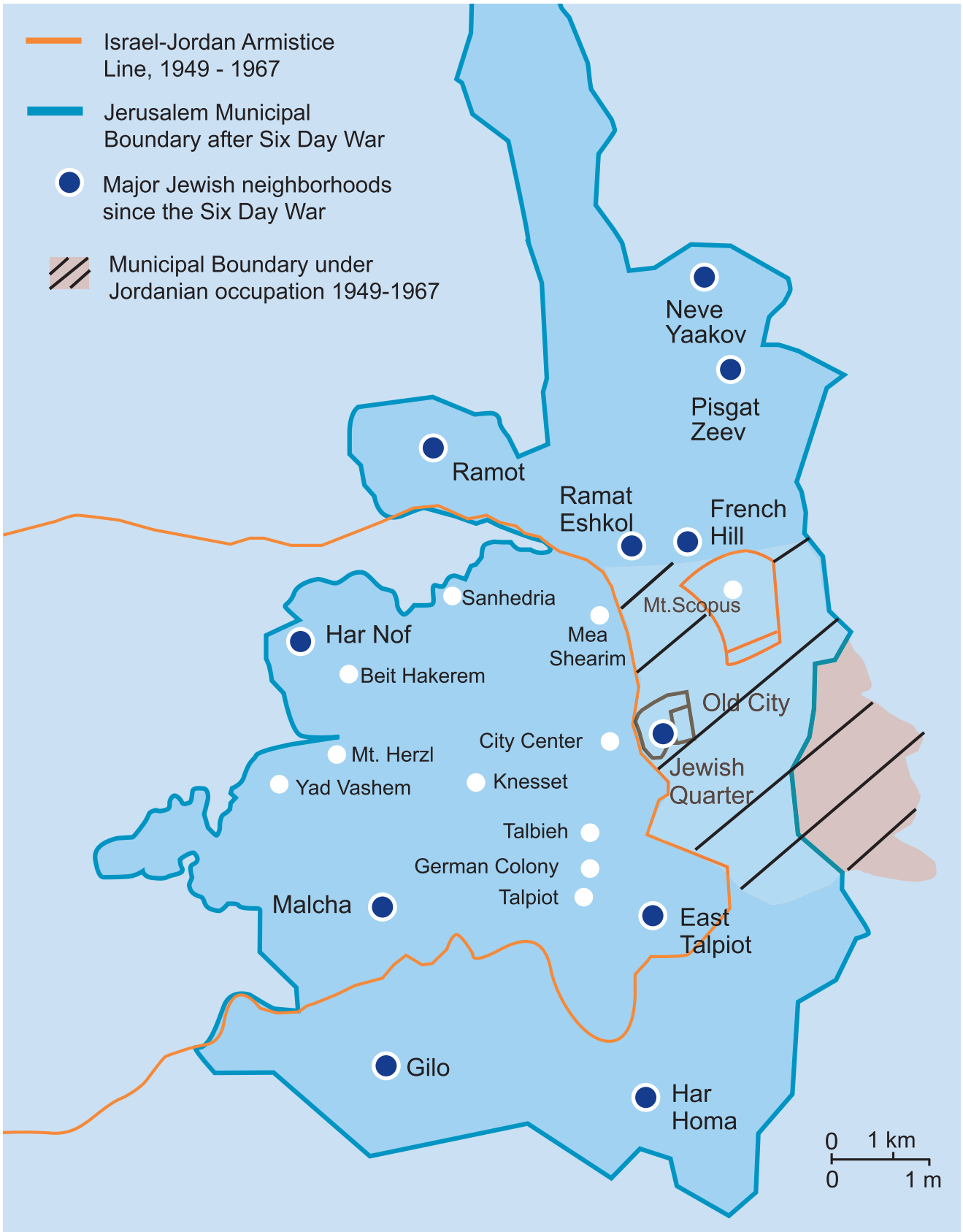
Map 7: Vulnerability of Jerusalem



Strategic Terrain Dominating Jerusalem:
The Vulnerability of Jerusalem and the Jerusalem-Tel Aviv Highway

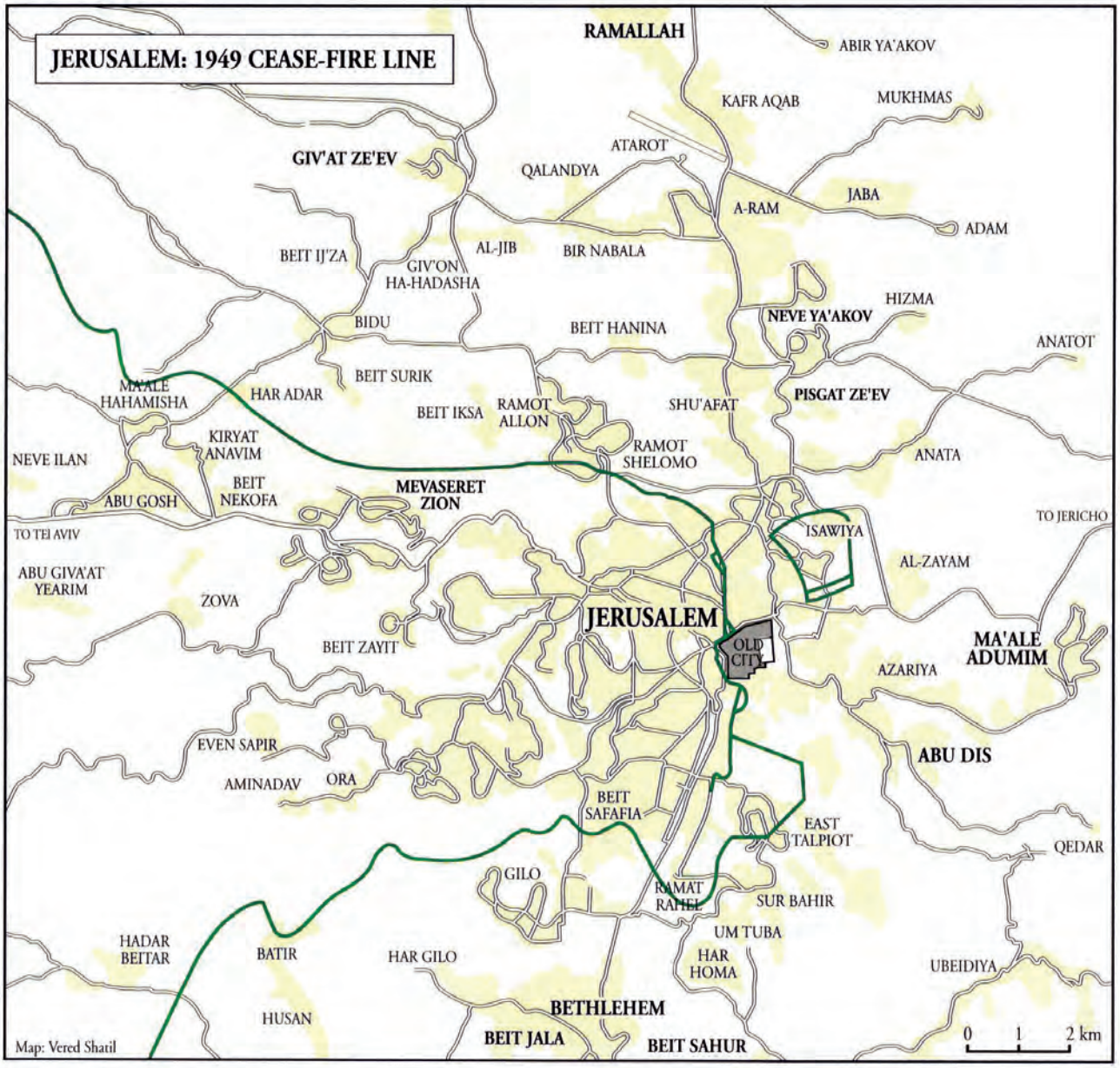
Map 8: Israel and the Middle East

Map 9: Jerusalem Municipal Boundary (after Six-Day War)

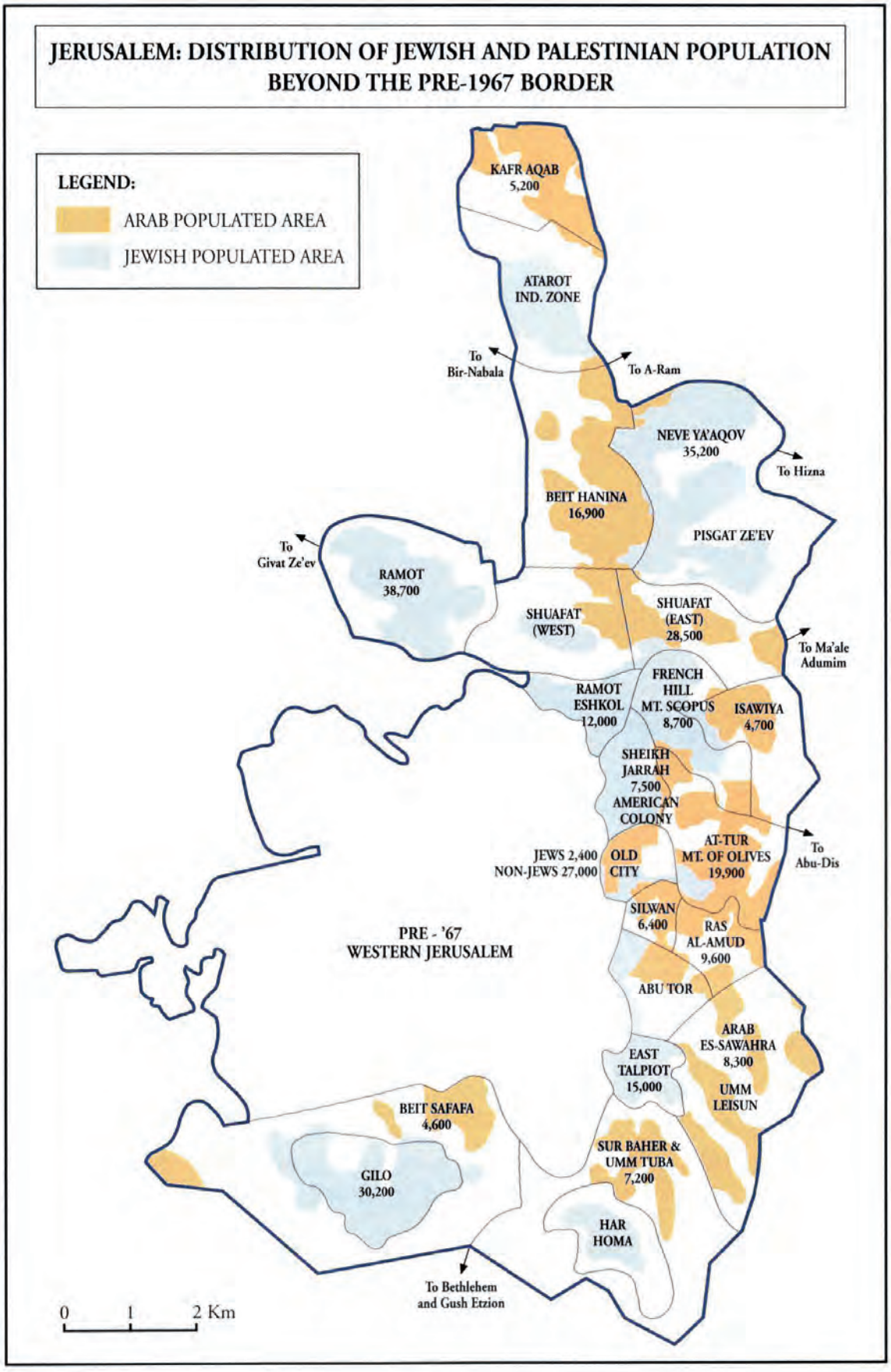


source: YESHA Council

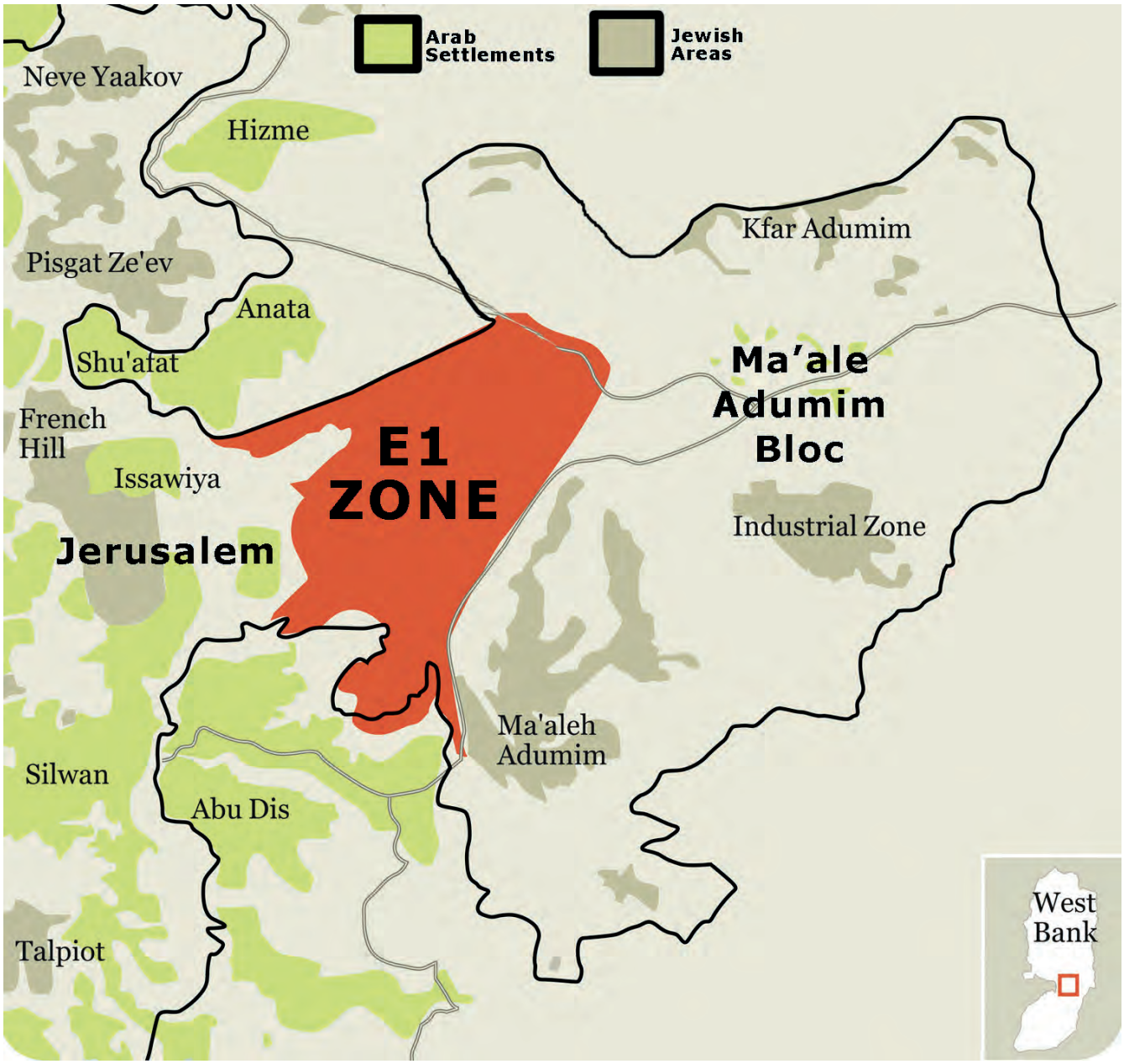
Map 10: Jerusalem and the 1949 Armistice Line



Map 11: Jerusalem and the Jewish and Arab Population Areas



Map 12: The E1 Zone: Israeli Planning Zone in Area C



The E1 zone is an Israeli planning zone of approximately 12 square kilometers. This zone falls within Area C (full Israeli military and civilian control). Originally adopted by Israel in 1995, the "E1 Plan" envisions construction of housing and industrial buildings that would connect Jerusalem with the town of Ma'ale Adumim. The plan has been frozen since 2009.